

June 1, 2001

TO: All Licensed Title Settlement Agents and Agencies
All Licensed Title Insurance Companies

RE: Consumer Real Estate Settlement Protection Act (CRESPA)

This letter has been prepared by the Bureau of Insurance in an effort to share information and provide guidance to the title settlement agent industry in the Commonwealth. During the past several years, the Bureau of Insurance has received and reviewed over one thousand CRESPA audits and conducted numerous investigations related to CRESPA. A number of common violations have been identified and are provided here in an effort to help agents avoid similar problems. Each problem area will be identified by a specific section of the Virginia Code. Agents are encouraged to familiarize themselves with **all** provisions of CRESPA (§ 6.1-2.19 et. seq. of the Code of Virginia and 14 VAC 5-395-10 et. seq. of the Virginia Administrative Code) and Virginia insurance laws pertaining to insurance agents (Title 38.2 of the Code of Virginia).

Section 6.1-2.21 of the Code of Virginia

During the 2000 General Assembly Session, an addition was made to Subsection A of § 6.1-2.21 that states "Any title insurance agent acting in the capacity of a settlement agent shall be appointed by a title insurance company licensed in the Commonwealth." This change in the law prevents agents who have not yet obtained an appointment, or have lost all of their appointments, from becoming a settlement agent or continuing to act as a settlement agent.

Section 6.1-2.23 of the Code of Virginia

This section is where the Bureau of Insurance identifies the greatest number of violations by settlement agents. This section contains several important provisions:

1. This section requires agents to keep funds received on Virginia settlements (i.e. settlements on dwellings and property located in Virginia) in a separate fiduciary account. This means Virginia settlement funds cannot be commingled with settlement funds from other states or with other non-settlement funds. One example of

a violation would be placing Virginia settlement funds into an account containing settlement funds from a closing involving real estate located in Maryland.

2. This section prohibits settlement agents from retaining any interest received on funds deposited in connection with any escrow, settlement, or closing. The Bureau is still finding instances where settlement agents have retained interest on their settlement accounts in violation of this section of CRESA.

3. This section also states that “funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed and, if applicable, in accordance with § 6.1-2.13. A settlement statement which has been signed by the seller and the purchaser or borrower shall be deemed sufficient to satisfy the requirement of this subsection.” The violations the Bureau has seen relating to this provision include agents disbursing funds to parties not listed on the settlement statement (HUD-1 should mirror the disbursement sheet), agents disbursing funds prior to the recordation of the deed (unless consented to by all parties), and agents not disbursing funds within two business days of settlement in accordance with § 6.1-2.13 of the Code of Virginia. It has also been the Bureau’s longstanding position that when certificates of satisfaction are received from a lender, the agent has two business days to disburse funds held to record the release.

The fiduciary responsibilities of a settlement agent are extremely important. Some examples of violations of § 6.1-2.23 include cases where settlement agents have overcharged consumers and have failed to return these overcharges to the consumer. In cases where overcharges have been discovered, it is the Bureau’s practice to see that these funds are returned to the appropriate party. Overcharges have commonly been seen on document recording fees, release fees, and inspection fees.

In numerous cases, the Bureau has identified instances where the \$16.00 release recording fee is charged by both the lender and the settlement agent... in essence, a duplicate charge for the same service. The provisions of CRESA are clear in that if you charge \$16.00 for a governmental recording fee, then the \$16.00 should either be paid to the locality for the recording or returned to the consumer if the agent does not file the certificate of satisfaction. The Bureau’s main interest in how agents handle the \$16.00 recording fees is to see that these fees are accounted for, maintained in a fiduciary capacity, not commingled, and disbursed to the appropriate entity as required.

Additional fiduciary problems that have been noted with some frequency include agents depositing settlement funds into one account and making disbursements from a second account without transferring the necessary funds, agents failing to reimburse their account for service fees charged by the bank, and agents failing to notice that a lender has not provided the correct amount of funding prior to disbursement of proceeds. Agents are encouraged to verify the amount of funds that have been deposited into the escrow account prior to disbursement.

The 2001 General Assembly made two changes to § 6.1-2.23. Effective July 1, 2001, funds must be deposited in a separate fiduciary trust account or accounts in a financial institution licensed to do business in this Commonwealth no later than the close of the “second” business day (rather than the “next” business day).

Also effective July 1, 2001, agents are allowed to handle title insurance premiums in one of three ways. Section § 6.1-2.23 states in part:

“Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed. Funds payable to persons other than the settlement agent shall be disbursed in accordance with § 6.1-2.13, except...

Title insurance premiums payable to title insurers and agents may be (i) held in the settlement agent’s settlement escrow account, identified and itemized by file name or file number, as a file with a balance; (ii) disbursed in the form of a check drawn upon the settlement escrow account payable to the title insurer or agent but maintained within the settlement file of the settlement agent; or (iii) transferred within two business days into a separate title insurance premium escrow account, which account shall be identified as such and be separate from the business or personal funds of the settlement agent. These transferred title insurance premium funds shall be itemized and identified within the separate title insurance premium escrow account. All title insurance premiums payable to title insurers by title insurance agents serving as settlement agents shall be paid in the ordinary course of business as required by subsection A of § 38.2-1813.”

Section 6.1-2.23:1 of the Code of Virginia

A change made by the General Assembly during the 2000 General Assembly Session added the following language:

“No settlement agent shall intentionally make any materially false or misleading statement or entry on a settlement statement. An estimate of charges made in good faith by a settlement agent, and indicated as such on the settlement statement, shall not be deemed to be a violation of this section.”

This means that all settlement statements should reflect actual charges for services rendered. Supporting invoices or documentation should be part of the settlement file. For example, if a settlement agent is billed \$100.00 for a termite inspection, the \$100.00 charge should be accurately reflected on the settlement statement. Any inflation of charges that are not disclosed to the buyer or seller would be a violation of this new provision. The goal of this change is to have as much

disclosure as possible made to the buyer and seller with regards to how their funds are being disbursed.

Section 38.2-4616 of the Code of Virginia

Another problem the Bureau has seen is that a number of settlement agents are failing to provide the required notification to buyers of the availability of owner's title insurance. This section states in part:

"In connection with any transaction involving the purchase or sale of an interest in residential real property in this Commonwealth, the settlement agent as defined in § 6.1-2.10, before the disbursement of any funds, shall obtain from the purchaser a statement in writing that he has been notified by the settlement agent that the purchaser may wish to obtain owner's title insurance coverage including affirmative mechanics' lien coverage, if available, and of the general nature of such coverage, and that the purchaser does or does not desire such coverage. The notification shall include language that the value of subsequent improvements to the property may not be covered."

All agents are required to obtain such a statement **in writing** from the purchaser prior to the disbursement of any funds.

Section 38.2-1813 of the Code of Virginia

This section deals with reporting and accounting for premiums. This includes title insurance premiums collected by settlement agents for title insurance. It requires agents to maintain these premiums in a fiduciary capacity, be able to account for such premiums, and in the ordinary course of business pay the funds to the insurer entitled to the payment. The Bureau has seen numerous instances over the last several years where settlement agents have collected title insurance premiums and failed to remit them in the ordinary course of business. With regards to handling title insurance premiums, the Bureau considers the agent's contract with its title underwriter in determining the appropriate premium remittance time frame. Some agency contracts require premiums to be remitted on a monthly basis while other contracts may provide for 60 or 90 days or more for agents to remit premiums to the insurer. What the Bureau has seen, however, is an increasing number of agents who hold premiums for one or two years before remitting them to a title insurer. Agents are encouraged to contact their title insurance underwriter and have them provide in writing the specific remittance time frames in which you are to remit your title insurance premiums.

Sections 38.2-1822 and 38.2-1833 of the Code of Virginia

These two code sections deal with the licensing and appointment of agents. The Bureau has seen several instances recently where unlicensed individuals have signed title insurance policies for licensed title insurance agencies. These sections of the Code

of Virginia provide that no individual shall act as an agent on behalf of either a partnership, limited liability company, or corporation in the transaction of insurance unless that individual is licensed as an agent and appointed, if appointment is required by statute. We have also seen agents, who may be properly licensed, sign policies for title underwriters for which they do not hold an appointment. Agents are encouraged to verify that they are properly appointed with all title underwriters with whom they are currently doing business and instruct their unlicensed staff not to sign title insurance policies or binders.

Monthly Reconciliations

One additional problem noted by many underwriters performing audits as well as by Bureau staff is, in many instances, settlement agents do not keep their escrow account reconciled or reconciled in a timely manner. Numerous instances have been found where funds remain dormant in an escrow account for years with no follow up by the settlement agent. Agents are encouraged to keep timely and accurate reconciliations of their escrow accounts in order to keep funds from becoming stale or unidentifiable.

The Bureau of Insurance is identifying fewer registration violations, and it appears that agents are doing a better job of maintaining proper registrations and the required insurance and bonds. As a reminder to agents, if you have any questions regarding CRESPA registration, you may contact the Virginia State Bar at (804) 775-0530. If you have any questions regarding your license or your required insurance and bonds, you may contact the Bureau of Insurance, Agents Licensing Section at (804) 371-9631.

Copies of the Consumer Real Estate Settlement Protection Act and other related Virginia insurance laws and regulations may be obtained from the Internet by visiting <http://www.scc.virginia.gov/division/boi/webpages/crespa/>.

Any questions related to this informational letter may be directed to the Bureau of Insurance, Property and Casualty Agent Investigations Section at (804) 371-9465. This letter is not meant to be all inclusive.

Sincerely,

Mary M. Bannister
Deputy Commissioner
Property and Casualty Division

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